

<sup>2</sup> The Board notes that, following the November 5, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a right hand injury in the performance of duty, as alleged.

## **FACTUAL HISTORY**

On August 16, 2018 appellant, then a 53-year-old sheet metal worker, filed an occupational disease claim (Form CA-2) alleging that she sustained a right hand injury when performing repetitive duties including drilling downward for long periods of time, and using rivet guns, hydraulic tools, and power tools, while in the performance of duty. She indicated that she first became aware of her condition on August 7, 2018, and realized its relationship to her federal employment on August 10, 2018. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on August 10, 2018 and returned to work that same day, at which time she was placed on “desk work.”

In a report dated August 10, 2018, Dr. Sean I. Moore, Board-certified in public health and general preventative medicine, indicated that appellant could return to work with temporary medical restrictions of desk work only, minimal use of right hand, no climbing, and no lifting over five pounds.

On August 16, 2018 OWCP received a position description for a sheet metal worker. According to the position description, the sheet metal work position required the use and maintenance of tools, including basic hand and power tools, such as hammers, chisels, hand snips, band and circle saws, squaring shears, seamers, bar folder, brakes, and stakes.

In a development letter dated August 21, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the employment factors alleged to have caused or contributed to her medical condition, and requested a medical report with a diagnosis from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a development letter of even date, OWCP informed the employing establishment of appellant’s claim. It requested that it submit comments from a knowledgeable supervisor regarding the accuracy of appellant’s statement, a description of her tasks that resulted in the exposure or contact, and a copy of her position description.

In three reports dated August 10, 15, and 20, 2018, Dr. Moore indicated that appellant complained of severe pain in her right hand and had related her employment duties as a sheet metal worker. He noted in the history portion of the August 10, 2018 report that appellant attributed her right hand condition to “drilling downwards for long periods of time. Appellant also uses rivet guns, hydraulic and power tools all day.” Dr. Moore included a similar history in his August 20, 2018 report. He diagnosed “other soft tissue disorders related to use, overuse, and pressure, right hand,” and noted right hand pain. Dr. Moore related that appellant could return to work with temporary medical restrictions of desk work only.

By decision dated November 5, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury or events occurred in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast serious doubt on an employee's statements in determining whether he or she had established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>9</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *M.S.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *C.L.*, Docket No. 19-0042 (issued April 17, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *C.L.*, *id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *M.S.*, *supra* note 5; *see B.B.*, Docket No. 12-0165 (issued July 26, 2012); *Mary Jo Coppolino*, 43 ECAB 988 (1992).

<sup>9</sup> *Id.*

### ANALYSIS

The Board finds that this case is not in posture for decision.

The evidence of record supports that her job duties as a sheet metal worker required that she repetitively use various hand-held tools. On the Form CA-2, appellant indicated that her job duties required her to drill downward for long periods of time, using rivet guns, hydraulic tools, and power tools all day. She further noted pain and swelling in her right hand two days prior to the filing of her claim. Dr. Moore's August 10 and 20, 2018 reports also contained a description of appellant's employment duties which were substantially similar to those she provided on the claim form.

In addition, in the August 21, 2018 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of statements provided on the Form CA-2; however, no additional evidence was received. The Board thus finds that the evidence is undisputed that appellant's work duties as a sheet metal worker included performing repetitive activities, with various hand tools, using her right hand.<sup>10</sup>

As appellant has established factors of her federal employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.<sup>11</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>10</sup> *Id.*

<sup>11</sup> See *D.K.*, Docket No. 17-0115 (issued June 1, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: July 16, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board